

APPEAL NO. 010055

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 28, 2000, a hearing was held. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant failed to notify the employer of a work-related injury pursuant to Section 409.001, and the respondent (carrier) is relieved of liability for this claim under Section 409.002; (3) the claimant did not have disability; and (4) the claimant's average weekly wage is \$400.00. The claimant urges reversal of the hearing officer's decision on issues (1) through (3) above. The carrier urges affirmance.

DECISION

We affirm.

Compensable Injury

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. It is undisputed that the claimant was assisting a coworker in removing a tire from a vehicle atop a flatbed trailer when he fell and landed on his head and shoulder. The tire, estimated to weigh between 150 to 200 pounds, fell to the ground and ultimately landed on the claimant. The claimant got up and continued assisting his coworker to finish the job. The claimant testified that his injury occurred on _____, while written statements from the claimant's coworker and supervisor indicate that the incident occurred on or about _____. The claimant was not seen by a doctor for the alleged injury until July 10, 2000, stating that he had no insurance or money to pay for medical treatment.

An insurance carrier is liable for compensation for an employee's injury that arises out of the course and scope of employment. Section 406.031. The 1989 Act defines an injury in pertinent part as damage or harm to the physical structure of the body. Section 401.011(26). The fact that an accident occurred does not necessarily equate to an injury. See Jarrett v. Travelers' Insurance Co., 66 S.W.2d 415 (Tex. Civ. App.-Amarillo 1933, writ dismissed). Also, mere pain is not compensable under the statute. National Union Fire Insurance Co. of Pittsburgh v. Janes, 687 S.W.2d 822 (Tex. Civ. App.-El Paso 1985, writ refused n.r.e.).

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). Whether, in fact, the accident occurred on _____, or _____, the hearing officer could infer from all the evidence that the claimant did not sustain an injury, that is, damage or harm to the physical structure of the body, in view of the fact that the claimant got up and continued to work after falling from the truck and went 18 months without medical treatment. The hearing officer's determination that the claimant did not sustain a compensable injury is not

so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Notice of Injury

The hearing officer did not err in determining that the claimant failed to timely notify the employer of a work-related injury and did not have good cause for failure to timely notify, and that the carrier is relieved from liability for this claim. Section 409.001(a) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurred. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002.

It is undisputed that the claimant's supervisor was notified of the claimant's falling accident; however, substantially conflicting evidence was presented with regard to the date of the accident and notice thereof. In a written statement, the claimant's supervisor stated that he was informed of the accident by a coworker, who described the event as having occurred on _____, and that he assumed the claimant was alright because the claimant himself did not report it. The claimant, on the other hand, testified that he informed his supervisor on two separate occasions within 30 days of the accident on _____, that he was hurt and injured. The hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Disability

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge